IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR.

1. D. B. CIVIL WRIT PETITION NO. 3270/98
(M/s New Manoram Cinema v The Rajasthan Taxation Tribunal & Ors)

2. D. B. CIVIL WRIT PETITION NO. 3271/98
(M/s New Manoram Cinema v The Rajasthan Taxation Tribunal & Ors)

Date of Judgment: July 27, 2007

Hon'ble Mr. Justice R. M. Lodha
Hon'ble Mr. Justice R. S. Chauhan

Mr. Sandeep Taneja for Mr. Paras Kuhad for the Petitioner
Mr. R. B. Mathur for the Respondent Nos. 2 and 3.

(Per R.S. Chauhan):

These two petitions arise out of a common order passed by the Rajasthan Taxation Tribunal, namely order dated 17-6-1998. But for the different Assessment Years, the legal issues, the contentions are the same in both these petitions, therefore they are being decided by this common judgment. For sake of convenience, the facts are being taken from D. B. Civil Writ Petition No. 3271/1998.

2. Briefly, the facts of the case are that M/s New Manoram

Cinema is a cinema, which is situated at village Alampur, Tehsil Tijara, District Alwar. The cinema is situated in Khasra No. 90-91 of the said village. The cinema is, thus, situated within the territorial jurisdiction of village Panchayat Alampur and not within the municipal limits of a Municipal Board or Corporation. Vide notification dated 1-12-1982, the Government remitted the entertainment tax chargeable under the Rajasthan Entertainment and Advertisement Act, 1957 ('the Act of 1957', for short) for new cinema to be constructed in towns having a population of less than one lakh after the issuance of the notification. For the first year, the remission was 100%; for the second year, it was 50%; for the third year, it was 25% and from the fourth year, there was no remission. This concession was to be available to those who constructed the cinemas on or before 31-3-1987. Since the petitioner was eligible for the said concession, they applied for the necessary remission.

3. Furthermore, under Section 6 (3) of the Act, the Government framed a Composition Scheme for the Entertainment Tax. The petitioner submitted his application for

composition of the said tax. Vide order dated 22-3-1998, the composition was agreed upon. The said order was for a period from 1-4-88 to 31-3-1989. Thereafter, according to the said composition scheme the petitioner applied for the composition for the subsequent periods i.e. for the Financial Years 1989-‘90, 1990-‘91, 1991-‘92, 1992-‘93, 1993-‘94, 1994-‘95, 1995-‘96, and 1996-‘97 on different dates and the Respondent No. 2 agreed for the composition of the tax liability. For the year 1992-’93, vide order dated 8-6-1992, the tax liability was compounded as Rs. 2,84,971/-. Moreover, for the financial year 1993-94, vide order dated 31-3-1993 the tax liability was compounded for Rs. 3, 45, 088/-. However, later on vide order dated 8-4-1993, the Respondent No. 2 suo motu amended the order dated 31-3-1993 and increased the composition fee to Rs. 3, 48, 669/-.

4. Further, on 15-5-1996 the Respondent No. 2 issued a notice to the petitioner for amending the composition order dated 8-6-1992 and for increasing the composition fee for the Assessment Year 1992-‘93. The petitioner challenged the said

notice before the Rajasthan Taxation Tribunal (‘the learned Tribunal’, for short). However, vide order dated 16-8-1996, without going into the merits of the case, the learned Tribunal disposed of the said petition after directing the Respondent No. 2 to receive the petitioner’s reply, to give them an opportunity of hearing and to seek the prior approval of the Commissioner, if rectification was warranted. Consequently, the Respondent No. 2 issued a notice to the petitioner on 31-8-1996. The petitioner submitted their reply. However, vide order dated 4-9-1996, the Respondent No. 2 directed the petitioner to pay a composition fee of Rs. 4, 71, 274/- and to pay an interest of Rs. 3, 89, 741/- thus totaling Rs. 8, 65, 035/-. Since the petitioner was aggrieved by the said order, they challenged the same before the learned Tribunal. Moreover, vide order dated 22-1-97 the Respondent No. 2 increased the composition fees for the Assessment Year 1993-94, the petitioner also challenged the same by filing a separate petition. However, after hearing the parties, through a common order dated 17-6-1998, the learned Tribunal dismissed both the petitions. Hence, these writ petitions before this court.

5. Mr. Sandeep Taneja, the learned counsel for the petitioner has raised two-fold submissions before us: firstly, the cinema is located within the territorial jurisdiction of village panchayat Alampur. It is not situated with the municipal limits of a Municipal Board or Corporation. According to Section 19A of the Act of 1957, for those cinema which fall under the territorial jurisdiction of a panchayat, the power to collect tax under the said Act is with the Panchayat Samiti and not with the Respondent No. 2. Therefore, the Respondent No. 2 had no power to compound the tax and to collect the same from the petitioner. Hence, the orders increasing the composition fees are per se illegal. Secondly, under a bona fide mistake of fact and of law, the petitioner had paid the composition fees to the Respondent No. 2. Hence, the same should be reimbursed to the petitioner.

6. On the other hand, Mr. R. B. Mathur, the learned counsel for the Revenue, has argued that the petitioner had submitted an application for availing the benefit of the composition

scheme. Thus, it is the petitioner, which had paid the composition fees. Secondly, while paying the composition fees, the petitioner had realized the same from the viewers. Hence, to return the composition fees would amount to unjust enrichment of the petitioner, which is impermissible in law.

7. In rejoinder, Mr. Taneja has contended that according to the Composition Scheme, the cinema tickets were required to show the full amount of payment concerning admission, without separately showing any amount relating to tax, compounding. Thus, the petitioner has not collected any amount from the viewer as entertainment tax. According to him, the Revenue has not led any evidence to show that the petitioner had charged a separate amount from the viewers as entertainment tax.

8. We have heard the learned counsels for the parties and have perused the impugned order.

9. Section 3 of the Act of 1957 defines certain terms as

under: (1) “admission” includes admission as a spectator or as one of an audience and admission for the purpose of amusement by taking part in entertainment;

(2) “admission to an entertainment” includes admission to any place in which an entertainment is held;

(5) “ entertainment” includes any exhibition (show) performance, amusement, game or sport to which persons are admitted for payment;

10. Section 4 of the Act of 1957 is the charging section and is as under:

> “4. Levy of tax on payment for admission.--(1) There shall be levied, charged and paid to the State Government on all payments for admission to an entertainment, a tax at such rate not exceeding 100 percent of the payment for admission, as may be notified by the State Government from time to time, subject to a minimum of five paise in any one case, the amount of tax wherever necessary shall be rounded off to the nearest multiple of five paise, fractions of two and half paise or more being counted as five paise, and less than two and half paise being ignored.
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> (2) and (3) x x x
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> (4) The entertainment tax shall be levied and paid to the State Government also on every complimentary ticket issued by the proprietor for

every entertainment, as if full payment had been made for admission to such entertainment according to the class of seat or accommodation, which the holder of such ticket is entitled to occupy or use and such holder shall be deemed to have been admitted for payment for the purpose of this Act:

Provided that no such tax shall be charged and levied on complimentary tickets issued to--

(i) the representatives of the press, or
(ii) the members of the Board of Censors of its panels, or
(iii) the officers of Government who, as part of their duty are entitled or required to be present at the entertainment, or
(iv) the distributors or producers of films or their representatives who are present at the entertainment for business purposes.

(5) Where the payment for admission to an entertainment is made by means of lump sum paid as a subscription or contribution to any society or person for a season ticket or for the right of admission to a series of entertainments or to any entertainment during a certain period of time or for any privilege, right facility or thing combined with the right of admission to any entertainment or involving such right of admission without further payment or at a reduced charge, the entertainment tax shall be paid on the amount of the lump sump:

Provided that where the State Government is of opinion that the payment of a lump sum represents payments for other privileges, rights or purpose besides the admission to an entertainment or covers admission to an entertainment during any period for which the tax has not been in operation, the tax shall be

charges on such an amount as appears to the State Government to represent the right of admission to entertainments in respect of which the entertainment tax is payable.

(6) The entertainment tax shall be levied and paid to the State Government also for admission to an entertainment in any class of seat or accommodation--

(a) for which no rate of payment for admission thereto is at all fixed by the proprietor; or

(b) admission to which at the rate, if any, fixed by the proprietor for the class is not open to the members of the general public,

as if full payment had been made by the person admission to such seat or accommodation in such entertainment at such rate as may be fixed by the prescribed authority having regard to the seating arrangements of the class of accommodation and such other factors as he may consider necessary and the person admitted to such class of seat or accommodation shall be deemed to have been admitted for payment as aforesaid for the purpose of this Act:

Provided that no such rate shall be fixed by the prescribed Authority without giving the proprietor an opportunity of being heard:

Provided further that the rate so fixed shall not exceed the rate of admission fixed for the highest class of seat or accommodation in that entertainment."

11. Section 5 deals with manner of payment of tax and is as

follows:

> "5. Manner of payment of tax.--(1) Subject to other provisions of this Act, the entertainment tax shall be levied in respect of each person admitted on payment and shall be calculated and paid on the number of admission.
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> (2) The entertainment tax shall be due and recoverable from the proprietor.
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> (3) The proprietor shall submit such returns relating to payments for admission to an entertainment to such authority, in such manner and within such period as may be prescribed."

12. Section 6 deals with admission to entertainments in the following words:

> "6. Admission to entertainments.--(1) Save as otherwise provided by this Act, no person other than a person who has to perform some duty in connection with an entertainment imposed upon him by any law or otherwise shall be admitted for payment to an entertainment where the payment is subject to the entertainments tax, except with a ticket stamped with an impressed, embossed, engraved or adhesive stamp (not before used) issued by the State Government for the purpose of revenue and denoting that the proper entertainment tax has been paid.
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> (2) No proprietor shall admit any person to an entertainment without payment for admission thereof or at concession rates except in accordance with the prescribed conditions.
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> (3) Notwithstanding anything contained in sub-sections (1) and (2), the State Government may,

on the application of the proprietor of any entertainment in respect of which the entertainment tax is payable under this Act, allow such proprietor, on such conditions, as may be prescribed--

(a) to compound the tax payable in respect of such entertainment for a fixed sum, or

(b) to pay the amount of the tax due--

(i) by a consolidated payment of such percentage of the gross sum received by the proprietor or on account of payments for admission to the entertainment and on account of the tax, as the State Government may fix, or

(ii) in accordance with returns of the payments for admission to the entertainment and on account of the tax, or

(iii) in accordance with the results recorded by any mechanical contrivance which automatically registers the number of persons admitted.

(4) The restrictions imposed by sub-sections (1) and (2) (xxx) shall not apply to any entertainment in respect of which the tax due is payable in accordance with the provisions of sub-section (3)."

13. A bare perusal of these provisions reveal that under Section 4 while the State Government has the power to levy the tax on admission to an entertainment, the assessee is legally

bound to pay the tax to the government. According to Section 5 (1) the entertainment tax shall be levied in respect of each person admitted on payment. According to Section 5 (2) the entertainment tax shall be due and recoverable from the proprietor. According to Section 6 (2) no proprietor shall admit any person to an entertainment without payment for admission thereof or at concession rates except in accordance with the prescribed conditions. Section 6 (3) empowers the State Government to compound the tax payable in respect of such entertainment for a fixed sum.

14. Section 19 A empowers the Panchayat Samiti to collect the tax under the Act of 1957 as under:

> "19-A. Panchayat Samitis to collect tax under the Act.--(1) Notwithstanding anything in this Act, every Panchayat Samiti constituted for a block under the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 shall, as from a date notified by the State Government in this behalf (hereinafter referred to as the appointed date), collect within the block, the tax under this Act and for the purposes of such collection :-
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> (a) all the provisions of this Act shall apply and shall be deemed to have come into force in the block on and from the appointed day;

provided that section 14, 17 and 19 of this Act shall not so apply;

(b) the powers exercisable under any provision of this Aact by a prescribed authority shall be exercised in like circumstances by the Panchayat Samitis.

(c) the powers exercisable thereunder by the State Government, except those mentioned in sub-section (1) of Section 4, sub-section (2) of Section 7 and Section 18 shall be exercised in like circumstances by the Panchayat Samiti.

(d) in sections 15 and 16 reference to the State Government shall be construed as including references to the Panchayat Samiti, and

(e) references to officers and servants of the State Government shall be construed as including references to officers and servants of the Panchayat Samiti.

(2) As from the appointed date-

(a) no sum shall be payable by the State Government under section 14 to any local authority within the block, and

(b) the expenditure incurred in the collection of the taxes shall be met by the Panchayat Samiti from out of its fund and the proceeds arising therefrom shall be credited to that fund."

15. Commencing with a non-obstante clause, Section 19 A

does bestow the power of collecting the tax on the Panchayat Samiti from those cinemas, which are within its territorial jurisdiction. But for certain provisions, which have been excluded from the purview of the Panchayat Samiti, the powers given to the State Government and authorities have been bestowed on the Panchayat Samiti.

16. Basing his argument on the strength of Section 19A of the Act of 1957, Mr. Taneja has challenged the demand and the rectification by the Respondent No. 2. However, his argument is without force. For, firstly Section 4 of the Act of 1957 not only empowers the State Government to levy and charge the entertainment tax, but it also imposes a corresponding duty on the assessee to pay the tax to the State Government. Section 5 of the Act of 1957 makes the entertainment tax leviable in respect of each person admitted on payment. Sub-section (2) of Section 5 makes the tax recoverable from the proprietor. Hence, the State Government has the power to levy, charge and to recover the tax from the assessee. On the other hand it was the petitioner's legal duty to realize the tax from the viewer

and to pay the same to the Government.

17. Under Section 6 (3) of the Act of 1957, the Government is empowered to create schemes for compounding the tax. In fact, the Government had done so. According to the scheme, the petitioner was granted 100% remission in the first year, in the second year they were granted a remission of 50%, in the third, of 25% and in the fourth no remission was granted. In order to take advantage of the scheme, in order to avoid the burden of filing returns etc, the Petitioner had applied under the scheme and had taken advantage of the scheme for numerous Assessment Years. However, the Government discovered an apparent error on the face of the record. For, it stood to reason that with reduction in remission the tax liability must increase in the present case. If 50% of the tax liability in 1988-'89 came to be Rs. 2,30,380/- the full tax liability without remission obviously was Rs. 4, 60, 760/-. In 1989-'90 when the remission was reduced to 25% the tax liability should have increased beyond Rs. 2,30,380/- to at least Rs. 3,45,570/-. This is a computational error—a mistake apparent from the record—as a

consequence of which even by 1993-’94, even after allowing for escalation. the composition amount stood below the base year’s unescalated liability of Rs. 4,60, 760/- and naturally below the escalated amount of Rs. 8, 35, 999/-. Once this error was discovered, the Respondent No. 2 was certainly justified in issuing the demand notice and in passing the orders dated 4-9-1996 and 22-1-97.

18. Mr. Taneja’s second submission about reimbursement of the tax to the petitioner is also without merit. According to Section 6 (2) the proprietor could not admit any person to an entertainment without payment for the admission. Thus, the petitioner would have charged the entertainment tax from the viewer. Although the petitioner claims that he has not charged any entertainment tax from the viewer, but such a plea is untenable. The fact that the petitioner availed of Composition Scheme framed by the State Government leads to an inference that the tax has been realized from the viewers. The learned Tribunal also did not believe the case of the petitioner that he has not charged any entertainment tax from the viewer. Once

the tax has been passed off to the viewer, even if the tax is paid to the Respondent No. 2 under a mistake of fact or of law, the same cannot be reimbursed to the petitioner. For, the amount realized from the viewer, the petitioner is legally bound to pay to the Government. Hence, the petitioner cannot be permitted to retain the said amount. Thus, such reimbursement would surely amount to unjust enrichment of the petitioner. Hence, the learned Tribunal has validly denied the reimbursement to the petitioner. Therefore, we find no legal infirmity with the impugned order.

19. In the result these petitions have no force. They are, hereby dismissed.

R. S. Chauhan J. **R. M. Lodha J.**